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Pat. & T.M. OFFICE Board of Patent appeals and interferences



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CROWELL & MORING LLP Intellectual Property Group

P.O. Box 14300 Washington, DC 20044-4300 Appeal No: Appellant:

2005-1900

GERD BRANDHORST et al.

Application No: Hearing Room:

09/368,505

Hearing Docker:

Tuesday, September 13, 2005 Hearing Date:

Hearing Time: 01:00 PM

Location:

Madison Building - East Wing . 600 Dulany Street, 9th Floor Alexandrie, Virginia 22313-1450

#### NOTICE OF HEARING CONFIRMATION REQUIRED WITHIN TWENTY-ONE DAYS

Your attention is directed to 37 CFR § 41.47. The above identified appeal will be heard by the Board of Patent Appeals and Interferences on the date indicated. Hearings will commence at the time set and as soon as the argument in one appeal is concluded, the succeeding appeal will be taken up. The time allowed for organizaties twenty minutes uploss additional time is requested and permitted before the argument is commenced. If there are any inquires, please contact the Clerk of the Board at 571-272-9797.

CONFIRMATION OR WAIVER OF THE HEARING IS REQUIRED. This form must be completed below and facsimile transmitted to both: (1) the USPTO Central fax number (official copy), and (2) the Board of Patent Appeals and Interferences fax mumber (countesy copy) within TWENTY-ONE (21) DAYS from the mailing date of this notice indicating confirmation or waiver of the hearing. A copy of this notice may be alternately filed by mail if faccinile is not available.

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P.O. BOX 1450

ALEXANDRIA, VIRGINIA 22313-1450

In all communications relating to this appeal, please identify the appeal by its number.

HEADING ALTENUANCE CONFIRMILD ) HEARING ATTENDANCE WAIVED re of Attenne //Agont/Appellant Registration No.

Names of other visitors expected to accompany counsel: For information on visitor access to hearing rooms and accidity protectures at the USPTO Alexandria Chropus, see http://www.usuto.gov/web/effices/discon/pos/discon/someon/confess.html/bom/

NO.333 P.1

P.O. Box 14300, Washington, DC 20044-4300 = p202 624-2500 = f202 628-8844

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### FACSIMILE COVER PAGE

	Date August 3, 2005		
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To: U.S. Patent and Trademar	k Office		
Facsimile Telephone Number:	<u>571-273-0299</u>		
Total Number of Pages (Includes Cover Sheet): 7			
From: Herbert I. Cantor, Reg. No.	24,392	Phone:	202-508-8902
Our Ref: 010746.48111RE Your Ref: US Appln No. 09/368,	505	User ID:	1818
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PATENT

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

## BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

as frame

Application No.

: 09/368,505

Confirmation No.: 5618

Applicant

; Gerd BRANDHORST et al

Piled

: August 5, 1999

APPEAL, NO. 2005-1900

TC/AU

: 3754

Examiner

: Philippe DERAKSHANI

Docket No.

: 010746.48111RE

Customer No.

: 23911

Title

: DEVICE FOR EMPTYING A FILM TUBE

#### ADDENDUM TO CONFIRMATION OF HEARING

12 11 ...

Commissioner for Patents P.O. box 1460 Alexandria, VA 22313-1450

Sir:

This is supplemental to the Confirmation of Hearing filed herewith.

#### Request to Participate Telephonically

Counsel for Appellants elects to participate in the oral hearing telephonically. The Board is respectfully requested to provide appropriate instructions. Please send the instructions to the undersigned by fax at 202-628-8844.

#### Clarification

On October \$, 2003, Appellants filed a "Communication" asking the Board to remand

& MORING LLP

this case to the Examiner if the file had already been transmitted to the Board or, alternatively, asking the Examiner to reconsider the final rejection if the case had not yet been transmitted to the Board, in light of the then recently published decision and opinion in the case of Ex parte Eggen, 67 USPQ2d 1716 (BPAI 2003).

Since the Examiner did not comment on the Communication after the file had been lost in the PTO for some 2 1/2 years, it is assumed that the paper did not make its way to the file. In order that the file be complete, a copy of the Communication (without enclosure) is submitted herewith along with a copy of the post card receipt.

Under the circumstances, and in order to expedite the appeal, the request for remand is hereby withdrawn.

Respectfully submitted.

August 3, 2005

Registration No. 24,392

CROWELL & MORING LLP P.O. Box 14300 Washington, D.C. 20044-4300

Tel.: 202-624-2605 Fax: 202-628-8844

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1860/48111RE PATENT

NO.333

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

12:00PM

Gerd BRANDHORST et al.

Serial No. 09/868,505

Group Art Unit:

8754

Filed: August 5, 1999

Examiner:

P. DERAKSHANI

DEVICE FOR EMPTYING A FILM TUBE

#### COMMUNICATION

Commissioner for Patents P.O. Box 1450 Alexandria, VA 22319-1450

Sir:

AUG. 3.2005

This is supplemental to the Brief and Reply Brief filed in this case. If the file has already been transmitted to the Board, it is requested that this paper be considered a Request for Remand to the Examiner. If the file has not yet been transmitted to the Board, the Examiner is respectfully requested to reconsider the rejection in light of the following discussion.

The Board recently published a decision and opinion in the case of Ex Parte Eggert (Appeal No. 2001-0790, May 29, 2003) (Copy enclosed for the Examiner's convenience). In Eggert, the Board explained that claims of a scope falling between the scope of an issued patent claim and the scope of a rejected claim which was then amended to result in the issued patent claim would not involve recapture it is suggested that Eggert might be relevant to the rejection in

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the instant case and should be considered by the Examiner before the Board hears this appeal.

Respectfully submitted

Hyrbert I. Cantor Registration No. 24,892

October 8, 2003

CROWELL & MORING LLP P.O. Box 14300 Washington, D.C. 20044-4300 Tel. 202-624-2500 Fax 202-628-8844 HIC:tev

/Ψ PATENT

Atry Docket: 1660/46111RE

Serial No.: 09/368,505 Filing Date: AUGUST 5 1999

The following has been received in the U.S. Petent & Trademark Office on the date stamped hereon:

Communication
Copy of Ex Parte Eggert

DUE DATE

HIC:tov

OCT 0 8 2003

DEMARK CROWELL & MORING, LLP P.O. Box 14300 WASHINGTON, D.C. 20044-4300

Today's Date: October 8 2003

TEL: (202) 624-2500